

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MICROSOFT CORPORATION,

Plaintiff,

v.

ALCATEL-LUCENT,

Defendant.

C.A. No. 07-90-SLR

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR
AN UNCONDITIONAL EXTENSION OF TIME**

Plaintiff does not have, and never has had, any objection to a reasonable extension of time for Defendant to “analyze the claims made against it and decide how to respond” —the stated purpose of Defendant’s request for additional time from this Court. (D.I. 10 at ¶ 2.) Rather than do so, however, Defendant apparently seeks to stall for two months and then advise of some perceived technical deficiency in service of process. To short-cut this procedural dance, Plaintiff’s counsel responded in an email as follows to the first indication that service of process may be of concern:

What is the issue with the service? Perhaps we can clear that up through some mutually agreeable approach and at the same time get your folks the extension that they want.

Ex. A.¹ When Defendant continued to balk, Plaintiff’s counsel explained as follows:

We have indicated our flexibility regarding the due date for responding to the Complaint and I believe that all the bases regarding service of process have been properly addressed. Nonetheless, please advise your side of Microsoft's concern regarding waiting until April 20th only to learn that there is some perceived issue with service that can be remedied. If there is some service issue, we should get it ironed out now rather than let it languish for another month or so.

¹ A true and accurate copy of e-mail correspondence of counsel is attached hereto as Exhibit A for the Court’s convenience.

Id. Rather than engage cooperatively regarding this issue, Defendant filed the now-pending motion demanding an unconditional extension of time.

Defendant can only be searching for a loophole regarding service of process, because it has already been physically served with two copies of the summons and Complaint—via long-arm service by registered mail sent to its New Jersey facility (D.I. 9) and directly at its facility in France via Federal Express mail sent by the Clerk of this Court (D.I. 5-8). Allowing Defendant nearly two months before it even advises Plaintiff of any perceived technical deficiency regarding service would serve no legitimate purpose. Thus, Plaintiff respectfully opposes Defendant's unconditional demand to delay until April 20th before providing any response at all regarding any perceived problems with service of the Complaint.

DATED: March 19, 2007

FISH & RICHARDSON P.C.

By: /s/ Thomas L. Halkowski
Thomas L. Halkowski (# 4099)
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P.O. Box 1114
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*Attorneys for Plaintiff
Microsoft Corporation*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 19, 2007, I electronically filed
**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR AN
UNCONDITIONAL EXTENSION OF TIME** with the Clerk of Court, using CM/ECF
which will send notification of such filing to the following Delaware counsel. In
addition, the filing will also be served via hand delivery.

Jack B. Blumenfeld
Morris, Nichols, Arsht & Tunnell LLP
1201 N. Market Street
P.O. Box 1347
Wilmington, DE 19899

*Attorneys for Defendant
Alcatel-Lucent*

/s/ Thomas L. Halkowski
Thomas L. Halkowski (#4099)

Exhibit A

Sharon Bradley

From: Blumenfeld, Jack [JBlumenfeld@MNAT.com]
Sent: Thursday, March 15, 2007 5:27 PM
To: Thomas Halkowski
Subject: RE: Microsoft v. Alcatel-Lucent

Tom --

I have passed your message along to my client. In the meantime, unless we hear today that Microsoft will agree to an unconditional extension of time, we will file a motion either tonight or in the morning. Thanks for your consideration.

Jack

From: Thomas Halkowski [mailto:halkowski@fr.com]
Sent: Thursday, March 15, 2007 12:59 PM
To: Blumenfeld, Jack
Subject: RE: Microsoft v. Alcatel-Lucent

Jack,

We have indicated our flexibility regarding the due date for responding to the Complaint and I believe that all the bases regarding service of process have been properly addressed. Nonetheless, please advise your side of Microsoft's concern regarding waiting until April 20th only to learn that there is some perceived issue with service that can be remedied. If there is some service issue, we should get it ironed out now rather than let it languish for another month or so.

Per your request, I will check with our side regarding your proposal for an unconditional extension of time. In the interim, please double-check with your side regarding whether there's an approach we can take that will eliminate any concerns regarding service of process.

Regards,

Tom

From: Blumenfeld, Jack [mailto:JBlumenfeld@MNAT.com]
Sent: Thursday, March 15, 2007 12:27 PM
To: Thomas Halkowski
Subject: RE: Microsoft v. Alcatel-Lucent

Tom -- We are investigating the service of process issue and will not agree not to contest. Please let me know whether we can have the 30 days, so that we know whether we have to get a motion on file.

Jack

From: Thomas Halkowski [mailto:halkowski@fr.com]
Sent: Thursday, March 15, 2007 12:15 PM
To: Blumenfeld, Jack
Subject: RE: Microsoft v. Alcatel-Lucent

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Jack,

What is the issue with the service? Perhaps we can clear that up through some mutually agreeable approach and at the same time get your folks the extension that they want.

Please advise.

Thanks,

Tom

From: Blumenfeld, Jack [mailto:JBlumenfeld@MNAT.com]
Sent: Thursday, March 15, 2007 11:58 AM
To: Thomas Halkowski
Subject: RE: Microsoft v. Alcatel-Lucent

Tom -- We will not agree to the condition that you have proposed. Please let me know whether I can e-sign for you without that condition or whether we have to seek an extension from Judge Robinson.

Jack

From: Thomas Halkowski [mailto:halkowski@fr.com]
Sent: Wednesday, March 14, 2007 4:18 PM
To: Blumenfeld, Jack
Subject: RE: Microsoft v. Alcatel-Lucent

Jack,

Microsoft agrees to this stipulation and you can e-sign the stipulation on my behalf with the understanding that Alcatel will not be contesting service of the Complaint. If there are any issues, please give me a call.

Regards,

Tom

From: Blumenfeld, Jack [mailto:JBlumenfeld@MNAT.com]
Sent: Wednesday, March 14, 2007 11:00 AM
To: Thomas Halkowski
Subject: Microsoft v. Alcatel-Lucent

<<ALCATEL / Microsoft - Stipulation and Order extending time to respond to complaint.DOC>>
Tom -- Thanks for your email. Please let me know whether I can e-sign this for you and file it.

Jack

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3/19/2007

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